



# Contract Administration & Risk Transfer

Certificate In Risk Management Program

25 August, 2004

Mark Brady, UCIP Loss Control Manager

# 1421 the year China discovered America

- In 1421 China sent out fleets to invite rulers from all over the world to a coronation
- No longitude
- By the time most of the fleets returned, a new emperor was in place.
- Instead of gaining glory the fleets were defamed.





# Negotiating Contractual Currents

- Your job as a risk manager will be to evaluate contracts for risk related provisions.
- Ambiguous provisions, or the absence of provisions can have unintended results.
- At a minimum your Goals are to:
  - Only accept the risk that you can finance or insure.
  - Transfer any other risk to the other party.

# CONTRACT Longitude/Latitude

- Identify parties
- Executed by appropriate representatives
- Date
- Consideration
- Description of terms
- Termination
- Applicable law
- Headings are only advisory



# TRANSFERRING RISK: WHY

- Place burden of the risk with the party receiving the benefit.
- Place the burden of the risk with the party who is able to control and insure against the risk.
- Power.
- Legal requirement.
- Custom or practice.

# WHEN TO TRANSFER RISK

- Use agreements when an independent user intends to use county facilities, property or equipment.
- Service contracts where the county provides particular services or receives particular services.
- Professional services contracts.
- Construction contracts.



# TOOLS FOR TRANSFERING

- Waivers
- Hold Harmless/Indemnification
- Insurance
- Additional insured endorsements

# WAIVERS

- The undersigned agrees that skiing is an INSANELY DANGEROUS ACTIVITY, and that the rental personnel were just sitting around minding their own business when the undersigned, who agrees that he/she is a RAVING LOON, came BARGING IN UNINVITED, waving a LOADED WEAPON and demanding that he/she be given rental skis for the express purpose of suffering SERIOUS INJURY OR DEATH, leaving the rental personnel, who repeatedly warned him/her with NO CHOICE BUT TO ....



# WAIVERS

- Knowing
- Voluntary
- Specifically apply to negligence
- Minors can't waive rights
- Parents can't waive minor's rights
- Have parents indemnify the County for any loss incurred due to the minor's participation—including losses incurred due to injury to the minor.

# WAIVERS

- Typically agreements to waive should include:
- Identification of Parties
- Description of the activity
- An acknowledgement of the risk
- An agreement to waive rights in exchange for participation
- Date of participation
- Signed/Dated



# HOLD HARMLESS/INDEMNIFICATION

- Agreement of one party to assume the legal liabilities of the other party.
- Limited--assume liability for own negligence.
- Intermediate--assume liability for own and joint negligence.
- Broad--assume all liability even for sole negligence of other party.
- Hybrid form—some parts for the contract may be at one level, and other parts at another.

# INDEMNIFICATION

- You should only assume risk for items or activities over which you have control.
- If an individual or organization is insolvent, such agreements may be worthless.
- State laws limit the kinds of indemnification for certain contracts.
- Hold harmless and indemnification clauses may include requirement to obtain insurance to cover a particular activity.
- May include activities not covered by insurance.



# BAD CLAUSE TEST

- “The County agrees to indemnify, defend, hold harmless, discharge, and release and forever acquit Contractor from and against any and all claims, demands, suits, and proceedings brought against it of any nature whatsoever . . . specifically including claims or losses alleged or proved to have arisen from the joint or sole negligence of Contractor. You expressly agree to name Contractor as an additional insured in your liability and any excess liability insurance policy.”

# INSURANCE

- Require insurance when you are concerned about the ability of the user to cover liability.
- Require insurance when the other party is making money from the enterprise and the potential risks are severe.
- Specifies the types and limits the other party must buy.
- Ensures that the other party has funds to pay the liability assumed under the indemnification clause.



# INSURANCE

- General liability—covers bodily injury, personal injury, and property damage arising out of operations of policy holder.
- Auto Insurance—covers liability for policy holder's operation of motor vehicles.
- Workers compensation—covers the policyholder's obligation to provide for its employee's on the-job-injuries.
- Builder's risk—covers damage to all property under construction.
- Professional liability.

# TYPICAL CONTRACTS REQUIRING INSURANCE

- Independent contractor
- Jail doctor
- Construction Contract
- Service contract



# TYPICAL INSURANCE REQUIREMENTS

- General Liability limit of not less than \$1,000,000 per occurrence.
- Similar provisions for Auto and Workers Compensation if such coverage is required.
- Provide county with executed certificates of insurance prior to commencement of contract.
- Such insurance shall not be cancelled without 30 days notice to county.
- Provide replacement certificates/policies if change is made.
- Maintain insurance for the duration of the contract

# ADDITIONAL INSURED

- Do not ask to be a named insured under the policy.
- Have the county listed as an additional insured on the other party's insurance.
- Fewer requirements for the additional insured.
- REQUIRE THE EVIDENCE OF ADDITIONAL INSURED STATUS BE PROVIDED BEFORE COMMENCEMENT OF THE AGREEMENT.



# BAD CLAUSE TEST

- “The contractor ensures that it is adequately insured for professional and third party liability.”

# FOLLOW UP

- Make sure documents are signed and dated.
- Make sure you have competent legal review.
- Make sure you obtain certificates of insurance if requested.
- Make sure you receive evidence of insurance.